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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of	)	
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)))	CC Docket No. 95-185

RECEIVED

MAR 25 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Commission

REPLY COMMENTS OF CENTENNIAL CELLULAR CORP.

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SUMMARY

Centennial supports the Commission's tentative conclusion that it has the jurisdiction and authority to preempt the States with respect to intrastate compensation for LEC/CMRS interconnection. Many commenters share this view. The LECs and various States incorrectly argue that the Commission lacks the authority to preempt the States in this critical area.

Section 332(c) of the Communications Act authorizes the Commission to regulate all aspects of interstate and intrastate LEC/CMRS interconnection. Sections 332(c)(1)(B) and 332(c)(3)(A) provide independent bases for Commission regulation of LEC/CMRS interconnection irrespective of the jurisdictional character of the communications. The statutory language and the accompanying legislative history clearly indicate that Congress intended for the Commission to fully respond to a reasonable request for LEC interconnection by a CMRS carrier. This means not only ordering the interconnection but assuring that the interconnection offered is reasonable. Similarly, Section 332(c)(3)(A) preempts State regulation of CMRS entry and the rates charged by CMRS carriers. Since CMRS carriers require interconnection with the LEC in order to provide service, they can be effectively denied entry by a State's requirement or approval of a LEC/CMRS interconnection arrangement that makes their entry technically or economically infeasible. Similarly, States are preempted from regulating the rates charged by CMRS carriers. There is nothing in the statutory language or associated legislative history of Section 332 that limits the phrase "rates charged by CMRS carrier" to

services provided directly to the public. Because interconnection costs are a important component of CMRS rates, state regulation of interconnection rates could significantly undermine federal preemption of CMRS rates.

Consistent with basic principles of statutory construction, the Telecommunications Act of 1996 did not alter the Commission's authority pursuant to Sections 201 and 332 to regulate LEC/CMRS interconnection. Moreover, federal preemption in the LEC/CMRS interconnection arena is independently justified because (a) the interstate and intrastate aspects of CMRS are "inseverable;" (b) State regulation of LEC/CMRS interconnection is inconsistent with and could thwart or impede the Commission's valid regulatory objectives; and (c) such preemption is necessary to protect valid federal regulatory objectives.

In addition, Centennial agrees that the Commission should adopt, as an interim measure, a "bill and keep" compensation mechanism for LEC/CMRS interconnection. "Bill and keep" is necessary to ensure the continued development of CMRS, especially in competition with LEC provided wireline services. Centennial takes exception to the legal and policy arguments advanced by LEC commenters that claim "bill and keep" is inappropriate.

First, the LECs argue that "bill and keep" is contrary to Sections 251 and 252 of the 1996 Act. This is simply not the case. Pursuant to Section 251(d) of the 1996 Act, the Commission is granted broad authority to establish regulations necessary to implement the various interconnection duties and obligations set forth throughout Section 251, including the reciprocal compensation obligations contained in Section 251(b)(5). Moreover, in Section 252(d), Congress specifically recognized "bill and keep" as meeting the pricing standards to be used by State commissions in evaluating interconnection agreements. Simply put, there is nothing implicit or explicit in the 1996 Act that would preclude the Commission from exercising its authority under Section 251(d) of the 1996 Act (or its authority under Section 332 of the Communications Act) and adopting a "bill and keep" compensation system for LEC/CMRS relationships.

Second, the LECs claim that adopting a "bill and keep" compensation system would amount to a taking without just compensation in violation of the 5th Amendment. This argument is not supported by the relevant case law. "Bill and keep" would have a *de minimis* economic impact on LECs and consequently, a Commission mandated "bill and keep" system would have little or no cognizable effect on the reasonable investment expectations of LEC shareholder. Most importantly, LECs cannot in good faith claim to be uncompensated by a "bill and keep" arrangement. In exchange for terminating CMRS-originated traffic on LEC networks, LECs are afforded the corresponding right to terminate LEC-originated traffic on CMRS networks. Thus, each party receives a valuable benefit and the LECs are not without compensation.

Third, LEC commenters claim that (1) the growth of the cellular industry and (2) the lack of formal complaints demonstrates that "bill and keep" is unnecessary because there are no problems with current LEC/CMRS interconnection policies. This "evidence" is disingenuous and misses the point. The issue is not whether the LECs' interconnection practices have stopped the cellular industry from expanding, they clearly have not, but whether current interconnection policies do enough to "encourage development of CMRS, especially in competition with LEC provided wireline service." In truth, the inflated interconnection fees charged by the LECs and the LECs' ability to continue to force such terms on existing providers and new entrants through delays and sheer bargaining leverage will ultimately retard the full development of the CMRS industry and inhibit CMRS providers from competing for local exchange customers.

Similarly, claims that the lack of formal interconnection complaints show that existing interconnection arrangements are reasonable is a bogus point. CMRS providers must have access to the PSTN the monopoly LEC customer base to establish and maintain a viable business. The LECs are under no such constraints and would suffer no immediate negative consequences for delaying or denying interconnection to a CMRS provider. The LECs therefore enjoy a vastly superior negotiating position vis-a-vis CMRS carriers, and use this advantage to extract favorable interconnection agreements.

The fact that few formal complaints have been filed is a testament to the fact that CMRS providers do not have the luxury of sacrificing their operations by engaging in extended Commission and State proceedings, and have been able to expand their businesses in the context of a duopoly in the provision of mobile services. It says nothing about the reasonableness of existing interconnection arrangements. The advent of increased competition within the CMRS industry, and the Commission's desire for CMRS providers to compete with LECs in the provision of local exchange services, clearly warrants a fresh look at LEC/CMRS interconnection policies.

Finally, Centennial agrees with commenters who advocate a dual approach for the origination and termination of interstate, interexchange traffic. Where a LEC is acting as a middleman transporting traffic between IXCs and CMRS providers, CMRS providers should be entitled to share a portion of the access charges collected by the LEC. On the other hand, where CMRS providers and IXCs are directly interconnected, access charge type payments are not necessary because any imbalances will be fully reflected in the privately negotiated IXC/CMRS interconnection agreements.

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Exchange Carriers and Commercial	)	
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To: The Commission

REPLY COMMENTS OF CENTENNIAL CELLULAR CORP.

Centennial Cellular Corp. ("Centennial"), by its attorneys, herein replies to certain issues raised in the comments filed in response to *the Notice of Proposed Rulemaking* ("Notice") released on January 11, 1996 and the *Supplemental Notice of Proposed Rulemaking* ("Supplemental Notice") released on February 16, 1996 in CC Docket No. 95-185.[1]

I. JURISDICTION/PREEMPTION

A. Summary

In its Comments, Centennial concurred with the Commission's tentative conclusion that it has the jurisdiction and authority to preempt the States with respect to intrastate interconnection compensation between local exchange carriers ("LECs") and

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[1] By *Order And Supplemental Notice Of Proposed Rulemaking*, FCC 96-61, released February 16, 1996, the Commission granted an extension of time to submit reply comments in this proceeding through and including March 25, 1996. Accordingly, these Reply Comments are timely filed.

commercial mobile radio service ("CMRS") providers.[2] Many commenters share this view.[3] Indeed, many commenters are of the view that the States have been legislatively preempted in this area and that Commission exercise of its preemption authority is not even necessary.[4]

On the other hand, the LECs and the States have argued that prior to the enactment of the Telecommunications Act of 1996 ("1996 Act"),[5] the Commission did not have the authority to regulate intrastate interconnection compensation matters.[6] These parties acknowledge that Section 332(c) of the Communications Act of 1934, as amended ("the Act"), created by

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[2] Comments of Centennial Cellular Corp., CC Docket No. 95-185 (filed March 4, 1996) ("Centennial Comments") at 27.

[3] See e.g., GSA Comments at 11-12, Vanguard Cellular Comments at 23-26, AT&T Comments at 20-26, AirTouch Comments at 43-51, PCIA Comments at 15-27, Century Cellnet Comments at 10-16, Arch Communications Comments at 18-21, Sprint Spectrum/APC Joint Comments at 36-50, New Par Comments at 23-25.

[4] See e.g., GSA Comments at 11-12, AT&T Comments at 19-24, AirTouch Comments at S1, PCIA Comments at 1-18, Century Cellnet Comments at 10-14, Arch Communications Comments at 18-20, Sprint Spectrum/APC Joint Comments at 40-44, New Par Comments at 23-24.

[5] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[6] See e.g., United States Telephone Association ("USTA") Comments at 14-21, GTE Comments at 42-43, US West Comments at 59-62, BellSouth Comments at 32-36, Ameritech Comments at 11-13, Public Utilities Commission of Ohio ("PUCO") Comments at 3-6, New York Department of Public Service ("NYDPS") Comments at 13-15, Connecticut Department of Public Utility Control ("CDPUC") Comments at 3-7, California Public Utilities Commission ("CPUC") Comments at 13-20.

the 1993 Budget Act[7], preempts the States from regulating CMRS entry and rates. However, these parties believe that the Commission's Section 332 authority did not preempt or authorize the Commission to preempt the States from regulating LEC/CMRS interconnection compensation issues. These same parties also argue that the 1996 Act clearly indicates that the Commission has no such authority.

As discussed in its Comments and herein, Centennial believes the LECs and the States share a myopic view of Section 332. In addition, as explained below, Centennial believes that the 1996 Act does not affect the Commission's authority to regulate LEC/CMRS interconnection issues regardless of the jurisdictional character of the communications.

B. Section 332(c) Authorizes The Commission To Regulate LEC/CMRS Interconnection Issues In A Jurisdictionally-Neutral Manner

There are two parts to Section 332(c).[8] Either part, standing alone, supports the Commission's tentative conclusion that it has authority to regulate all aspects of LEC/CMRS interconnection compensation. First, the interconnection requirement in Section 332(c)(1)(B) is jurisdictionally neutral and provides the Commission with authority over the rates, terms and conditions of the LEC/CMRS interconnection arrangement. Second, Section 332(c)(3)(A) explicitly preempts State regulation

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[7] Omnibus Budget Reconciliation Act of 1993, Pub.L. No. 103-66, 107 Stat. 312, 392 (1993) ("1993 Budget Act").

[8] 47 U.S.C. § 332(c).

of CMRS entry, rates charged by CMRS providers, and LEC/CMRS interconnection arrangements irrespective of the jurisdictional character of the communications.

Specifically, Section 332(c)(1)(B) requires that the Commission exercise its Section 201 authority to order LEC/CMRS interconnection upon reasonable request of a CMRS carrier. Section 332(c)(1)(B) also states that "[e]xcept to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this chapter."[9] Unlike section 201(a), which is limited to "interstate or foreign communication," the language of section 332(c)(1)(B) is jurisdictionally neutral. Congress clearly recognized that Section 201 by its very terms is limited to "interstate or foreign communication" and that an express exception was necessary in order to enable the Commission to address intrastate interconnection in the LEC/CMRS context.

The phrase "[e]xcept to the extent that the Commission is required to respond to such a request" clearly means that the Commission's response to a reasonable request by a CMRS carrier to order a LEC to interconnect with the CMRS carrier is an "expansion of the Commission's authority to order interconnection pursuant to this chapter." The legislative history of Section 332(c)(1)(B) supports this reading of Congressional intent to create a measured expansion of the Commission's authority under

[9] 47 U.S.C. §332(c)(1)(B).

Section 201 to LEC/CMRS interconnection, irrespective of the jurisdictional character of the communications.

> The House Bill requires in section 332(c)(1)(B) that the Commission shall order a common carrier to establish interconnection with any person providing commercial mobile service, upon reasonable request. Nothing here shall be construed to expand or limit the Commission's authority under section 201, except as this paragraph provides.[10]
>
> Section 332(c)(1)(B) of the Senate provision is identical to the House provision.[11]
>
> The Conference Agreement adopts the House provision of section 332(c)(1)(B).[12]

Given that Section 201(a) already limited the Commission's authority to order such interconnection to "interstate or foreign communications," Congressional concern that Section 332(c)(1)(B) not "expand or limit the Commission's authority under section 201 except as this paragraph provides" can only be reasonably interpreted to mean that Congress was expanding the Commission's authority for purposes of the paragraph to include the intrastate elements of the LEC/CMRS interconnection arrangement.

It is also clear that Congress required the Commission to fully respond to a reasonable interconnection request by a CMRS carrier by ordering the LEC to interconnect. A full response must include assuring that the interconnection offered by the LEC in response to the Commission order is indeed reasonable in its

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[10] 139 Cong. Rec H5792, H5916 (daily ed. August 4, 1993)(emphasis added).

[11] Id.

[12] Id.

rates, terms and conditions. To find otherwise would mean that Congress required the Commission to simply order the LEC to interconnect but did not give it any authority to assure that the interconnection arrangement was just and reasonable. Such a reading would make the interconnection requirement a hollow mandate. The issue for CMRS carriers in 1993, when Section 332(c) was enacted, was not the outright denial of interconnection by the LECs, but the unreasonableness of the rates and conditions of the interconnection offered by the LECs.

The Commission has on many occasions exercised its Section 201(a) authority to order a common carrier to interconnect with another common carrier with respect to interstate communications. In doing so, the Commission has never interpreted Section 201(a) as authorizing it to merely "order" the interconnection. The Commission has previously exercised its Section 201(a) authority in a manner that requires such interconnection offerings to be reasonable. For example, the Commission has required LEC/CMRS interstate interconnection to be the product of good faith negotiations, to recognize the principle of "co-carrier" status, and to incorporate the concept of mutual compensation.[13]

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[13] In the Matter of The Need To Promote Competition and Efficient Use of Spectrum for Radio Common Carriers, *Declaratory Ruling*, 2 FCC Rcd 2910 (1987), *Memorandum Opinion and Order On Reconsideration*, 4 FCC Rcd 2369 (1989) ("Interconnection Order"); and Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, *Second Report and Order*, 9 FCC Rcd 1411 (1994) at ¶230.

Moreover, it has regulated interstate interconnection compensation and practices pursuant to Section 201(b).[14]

In addition, it is significant that Congress indicated in Section 332(c)(1)(B) that it was creating an expansion of the jurisdictional nature of to Section 201 in its entirety, inclusive of both the Commission's authority to order interconnection pursuant to Section 201(a) and the Section 201(b) requirement that "all charges, practices, classifications and regulations for and in connection with such communication service, shall be just and reasonable . . . ."[15] Moreover, Section 332 as a whole, including the interconnection obligation contained in Section 332(c)(1)(B), is exempted from section 152(b).[16]

Section 332(c)(3)(A) specifically preempts State regulation of CMRS entry and the rates charged by CMRS carriers. This preemption encompasses the LEC/CMRS interconnection arrangement

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[14] See Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, 7 FCC Rcd 7369 (1992) (*Special Access Expanded Interconnection Order*); *recon.*, 8 FCC Rcd 127 (1992); *second recon.*, 8 FCC Rcd 7341 (1993); *vacated in part and remanded sub. nom.* Bell Atlantic Telephone Companies v. FCC, 24 F.3d 1441 (D.C. Cir. 1994) (*Bell Atlantic v. FCC*); *on remand* Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, 9 FCC Rcd 5154 (1994) (*Expanded Interconnection Remand Order*).

[15] 47 USC §§ 201(a) and (b).

[16] 47 USC § 152(b) ("Except as provided in . . . section 332 of this title . . . "). Any lingering doubt as to whether Section 332 was intended to apply to interconnection for intrastate communications is removed by the specific removal of that section as a whole from the ambit of Sections 153(b) and 221(b) of the Act which reserve jurisdiction over intrastate communications to the States.

irrespective of the jurisdictional character of the communications.[17] The LECs and State interests share an unduly narrow view of Section 332(c)(3)(A). For example, they argue that the preemption of State regulation of CMRS carrier entry means only that a State cannot deny a CMRS carrier the right to operate in the State.[18] However, CMRS carrier entry is determined by more than just a State commission ruling on an application for a certificate of public convenience and necessity. Since CMRS carriers, by definition, require interconnection with the LEC in order to provide their service, they can be effectively denied entry by a State's requirement or approval of a LEC/CMRS interconnection arrangement that makes their entry technically or economically infeasible.

Similarly, the LECs and State interests would have the Commission narrowly interpret Section 332(c)(3)(A) as preempting State regulation of the rates charged by CMRS carriers only for the services CMRS carriers provide to the public. The most obvious flaw in this argument is that neither the statutory language nor the legislative history expresses a clear Congressional intent to limit the preemption to that type of service, or, for that matter, to any type(s) of service. The

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[17] 47 USC § 332(c)(3)(A) ("Notwithstanding sections 152(b) and 221(b) of this title . . . ").

[18] See USTA Comments at 16-19, BellSouth Comments at 32-36, Ameritech Comments at 11-13, PUCO Comments at 3-6, NYDPS Comments at 13-15, CDPUC Comments at 3-7, CPUC Comments at 13-20.

preemption plainly applies to the rates charged by CMRS carriers for whatever service(s) or facilities such carriers provide.

The position of the LECs and the State interests would require a finding that State regulation of the rates charged by CMRS carriers for terminating calls originated on other networks is not preempted by Section 332 even though the plain language of that section specifically preempts the States from regulating CMRS rates. Moreover, interconnection costs are a significant component of CMRS rates. To preempt the latter without the former is to invite indirect de facto regulation by the States of the rates charged by CMRS carriers even for the services CMRS carriers provide directly to the public.

C. The Telecommunications Act of 1996 Does Not Curb The Commission's Authority to Regulate LEC/CMRS Interconnection Matters Irrespective of the Jurisdictional Character of the Communications Involved

The LEC and State interests also argue that the 1996 Act altered the LEC/CMRS interconnection landscape to the point that the Commission should either limit itself to adopting non-preemptive guidelines for the States to consider, or abandon this docket altogether.[19] Centennial strongly disagrees.

A basic rule of statutory construction requires that a statute be read in a way that allows all of its provisions to

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[19] See USTA Comments at 14-21, GTE Comments at 42-43, US West Comments at 59-62, BellSouth Comments at 32-36, Ameritech Comments at 11-13, PUCO Comments at 3-6, NYDPS Comments at 13-15, CDPUC Comments at 3-7, CPUC Comments at 13-20.

have effect.[20] Section 251 of the 1996 Act establishes three levels of interconnection obligations. First, the fundamental requirement to interconnect is made applicable to all telecommunications carriers.[21] Second, specific additional interconnection obligations are made applicable to local exchange carriers. Third, yet more interconnection obligations are made applicable to incumbent local exchange carriers. The only reference to a State role is contained in subsection (f) which concerns rural telephone companies in (f)(1) and rural carriers in (f)(2). In (f)(2), the second and third levels can be modified or suspended by the States upon request and the making of a compliant showing by a qualifying LEC.[22]

Most importantly, Section 251(i) explicitly preserves the Commission's authority to address interconnection independently of Section 251, pursuant to Section 201 of the Act. That section states that "[n]othing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201." The legislative history clarifies Congressional

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[20]As the doctrine of *ejusdem generis* provides, all language in a statute should be read in such a manner that all of it can be given effect, and none of it is rendered superfluous. See United States Dept. of Labor v. Perini North River Associates, 459 U.S. 297 (1982); Breiyer v. Sheet Metal Workers International Ass'n., Local Union No. 67, 110 S.Ct. 424 (1989).

[21]See Section 251(a) of the 1996 Act. The definition of "telecommunications carrier" appears to include CMRS carriers. See Section 3(a) of the 1996 Act ("The term 'telecommunications carrier' means any provider of telecommunications services....").

[22]A "qualifying" LEC is one that has "fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide."

intent, stating that "[n]ew section 251(i) makes clear the conferees' intent that the provisions of new section 251 are in addition to, and in no way limit or affect, the Commission's existing authority regarding interconnection under 201 of the Communications Act."[23]

As discussed above, the interconnection obligation contained in Section 332 expanded the Commission's authority to order interconnection under Section 201 of the Act to include the intrastate aspects of the LEC/CMRS interconnection arrangement. Thus, any Commission action in this proceeding that is grounded in Section 201 or 332 is not subject to the States' role identified in Section 251 of the 1996 Act. Similarly, since the Section 252 procedures apply only to interconnection obligations contained in Section 251, they are not mandated for any LEC/CMRS interconnection obligations established by the Commission pursuant to Sections 201 and 332.[24] The Commission has already imposed interconnection requirements similar to those contained

[23] H.R. Rep. No. 104-458, 104th Cong., 2d Sess. at 123 (1996) (emphasis added).

[24] In any event, the role of a State commission under Section 251(f)(2) or as an arbitrator under Section 252 is very narrow. In either case, the legislative history indicates that the Commission or a State shall, consistent with the protection of consumers and allowing for competition, use this authority to provide a level playing field, particularly when a company or carrier to which this subsection applies faces competition from a telecommunications carrier that is a large global or nationwide entity that has financial or technological resources that are significantly greater than the resources of the company or carrier.

in Section 251 in one manner or another in the case of interstate communications pursuant to its Section 201 authority.[25]

Where it is not possible to read the Act so as to give full effect to Sections 201, 251-252 and 332, another basic principle of statutory construction requires that in the case of a conflict between specific legislative language and general legislative language, the specific language governs.[26]

> Where there is no clear intention otherwise, a specific statute will not be controlled by a general one, regardless of the priority of enactment.[27]

Section 332 and its legislative history specifically address CMRS issues. On the other hand, the language of Sections 251 and 252 of the 1996 Act applies generally to all telecommunications carriers, local exchange carriers and incumbent local exchange

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[25] In the Matter of The Need To Promote Competition and Efficient Use of Spectrum for Radio Common Carriers, *Declaratory Ruling*, 2 FCC Rcd 2910 (1987), *Memorandum Opinion and Order On Reconsideration*, 4 FCC Rcd 2369 (1989) ("Interconnection Order"); and Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, *Second Report and Order*, 9 FCC Rcd 1411 (1994) at ¶230.

[26] See, e.g., Morales v. Trans World Airlines, Inc., 504 U.S. 374, 384, 112 S.Ct. 2031, 2037, 119 L.Ed.2d 157 (1992) ("it is a commonplace of statutory construction that the specific governs the general"); United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, AFL-CIO v. Reno, 73 F.3d. 1154, 1140 (D.C. Cir. 1996) ("canon of statutory construction dictating that specific statutory provisions govern general ones"); Techniarts Engineering v. U.S., 51 F.3d 301, 304 (D.C. Cir. 1995).

[27] Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437, 445, 107 S.Ct. 2494, 2499, 96 L.Ed.2d 385 (1987) (emphasis added by S.Ct.), quoting Radzanower v. Touche Ross & Co., 426 U.S. 148, 153, 96 S.Ct. 1989, 1992, 48 L.Ed.2d 540 (1976) quoting Morton v. Mancari, 417 U.S. 535, 550-551, 94 S.Ct. 2474, 2482-2483, 41 L.Ed.2d 290 (1974).

carriers. Thus, Centennial submits that since CMRS carriers are included within a general class of telecommunications carriers, statutory language specifically applicable to CMRS carriers has precedence over statutory language generally applicable to all telecommunications carriers regardless of the chronological sequence of the enactment of those provisions.

Lastly, it is "a cardinal principle of statutory construction that repeals by implication are not favored and will not be found unless an intent to repeal is clear and manifest."[28/] Section 1(b) of the 1996 Act states that "[e]xcept as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Communications Act of 1934." In addition to its plain meaning, this language clearly implies that any intended amendments or repeals of existing statutory provisions are explicitly denominated as such. There is nothing explicit in the 1996 Act that overrides or repeals Sections 201(a) or 332 of the Act.

[28/] Rodriguez v. United States, 480 U.S. 522, 524 (1987) (repeals by implication are not favored and will not be found unless an intent to repeal is clear and manifest); see also Randall v. Loftsgaarden, 478 U.S. 647, 661 (1986) ("[I]t is . . . a cardinal principle of statutory construction that repeals by implication are not favored..." quoting United States v. United Continental Tuna Corp., 425 U.S. 164, 168 (1976)); Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1017-1018 (1984) ("[R]epeals by implication are disfavored" and "where two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective..."); Posadas v. National City Bank, 296 U.S. 497, 503 (1936).

Applying the foregoing three principles of statutory construction to Sections 201, 332 and the provisions of the 1996 Act, there is no question that the Commission retains the authority to regulate LEC/CMRS interconnection regardless of the jurisdictional character of the communications involved.

Finally, in the interest of viewing the interconnection provisions of the 1996 Act in context, it is important to read Section 253 carefully. Section 253(a) states that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." Section 253(d) directs the Commission to "preempt the enforcement of [any] statute, regulation, or legal requirement . . . " that violates Section 253(a). Congressional concern is clearly focused on State action that "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[29]

The Section 253 language applies preemption to any State action that would undermine a CMRS carriers' ability to provide CMRS service. This necessarily includes state action concerning the rates, terms and conditions of a LEC/CMRS interconnection

[29] "Because new entry is a fundamental of competition, it is most important that the FCC act expeditiously on any complaint that alleges a violation of [Section 253]. Further the Commission must ensure that any State or local requirement fully conforms to the act's standard." 142 Cong. Rec H1176 (daily ed. February 1, 1996) (statement of Rep. Borski).

agreement. Section 253(e) states that this section "shall not affect the application of section 332(c)(3) to commercial mobile service providers." This means that Congress intended that the specific preemption of CMRS entry and rates charged by CMRS carriers, as provided for in Section 332(c)(3) of the Act, remains intact. It does not mean, however, that Section 253 is inapplicable to CMRS carriers. Rather, CMRS carriers receive the additional preemption protection of Section 253 whose language extends well beyond entry and rates regulation. State regulation of LEC/CMRS interconnection may indeed have the effect of prohibiting the ability of a CMRS carrier to provide CMRS service.

D. There Are Additional Bases For Commission Preemption Of State Regulation Of LEC/CMRS Interconnection

Centennial agrees with many of the commenters[30] that (a) federal preemption in the LEC/CMRS interconnection arena is independently justified because the interstate and intrastate aspects of CMRS service are "inseverable"; (b) State regulation of LEC/CMRS interconnection is "inconsistent with and could "thwart or impede [the] Commission's valid regulatory

[30] See AT&T Comments at 24-28, AirTouch Comments at 48-51, PCIA Comments at 19-23, Vanguard Comments at 23-26, Century Cellnet Comments at 14-16, Arch Communications Comments at 20-21, Sprint Spectrum/APC Joint Comments at 44-47, New Par Comments at 24-27.

objectives"; and (c) such preemption is necessary to protect valid federal regulatory objectives.[31]

Numerous commenters have provided the Commission with examples and reasons why the interstate and intrastate aspects of LEC/CMRS interconnection are not severable.[32] As the Commission recognizes, CMRS traffic is, by definition, mobile and does not respect geographic boundaries. CMRS traffic will operate without regard to state lines and will go wherever there is radio signal strength. Indeed, many of the Commission-authorized market areas for CMRS cross state boundaries.[33] To further the development of a "network of networks,"[34] the Commission has been moving

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[31] Louisiana Public Service Commission v. FCC, 476 U.S. 355, 106 S. Ct. 1890 (1986); Public Service Commission of Maryland v. FCC, 909 F.2d 1510 (D.C. Cir. 1990); The People of the State of California v. FCC, 75 F.3d 1350 (9th Cir. 1996).

[32] See AT&T Comments at 24-28, AirTouch Comments at 48-51, PCIA Comments at 19-23, Vanguard Comments at 23-26, Century Cellnet Comments at 14-16, Arch Communications Comments at 20-21, Sprint Spectrum/APC Joint Comments at 44-47, New Par Comments at 24-27.

[33] For example, the Commission has adopted Major Trading Areas (MTAs) and Basic Trading Areas (BTAs) as set forth in the Rand McNally 1992 Commercial Atlas & Marketing Guide for a number of commercial mobile radio services, including broadband PCS (see 47 C.F.R. §24.202) and narrowband PCS (see 47 C.F.R. §24.102). In addition, the Commission has proposed geographic licensing on an MTA basis for various paging services (see Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Further Development of Paging Systems, WT Docket 96-18, *Notice of Proposed Rulemaking* (released Feb. 9, 1996) at ¶34). Rand McNally organizes the 50 states and the District of Columbia into 47 MTAs and 487 BTAs.

[34] See Notice at ¶8. See also Remarks of Commissioner Rachelle B. Chong, Before the Practicing Law Institute and the Federal Communications Bar Association 13th Annual Institute on Telecommunications Policy and Regulation (December 14, 1995).

toward regional and nationwide service areas.[35] Moreover, the implementation of automatic roaming, call forwarding, and other auxiliary services has moved CMRS service even closer to the seamless nationwide network envisioned by the Commission.[36]

None of the LEC or State interests do more than baldly state that there are separable interstate and intrastate components in a LEC/CMRS interstate arrangement.[37] The LECs argue that interstate and intrastate calls are specifically identified and currently measured separately.[38] At best, interstate and intrastate calls can be separated through estimation. Centennial suggests that the use of estimates does not defeat the inseverability of the interstate and intrastate aspects of LEC/CMRS interconnection. Acceptance of estimation in lieu of an actual measurement is to begin a journey on a "slippery slope" where judgments would need to be made as to what methodology

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[35] For example, nationwide and/or regional service areas have been established by the Commission for both narrowband PCS (See 47 C.F.R. §24.102) and 929 MHz paging (See 47 C.F.R. §90.495).

[36] See In the Matter of Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Service, *Notice of Proposed Rulemaking*, WT Docket No. 96-6, FCC 96-17 (released Jan. 25, 1996) at ¶19 ("Some of these networks will go beyond regional coverage to achieve seamless nationwide coverage."); See also In the Matter of Nextel Communications, Inc. For Transfer of Control of OneComm Corporation, N.A., and C-Call Corp., *Order*, 10 FCC Rcd 10450 (1995).

[37] See USTA Comments at 20-21; BellSouth Comments at 32-33; NYNEX Comments at 35-40; Pacific Bell Comments at 101-103; PUCO Comments at 3-4; CPUC Comments at 11.

[38] Id.

creates a high enough confidence factor in the accuracy of the estimate.

In Centennial's experience, the best practical proof of inability to separate the interstate calls from the intrastate calls for LEC/CMRS interconnection purposes is that the LECs do not charge CMRS carriers a different or even separate rate for terminating an interstate call than they do for terminating an intrastate call. The truth is that it does not matter to the LEC whether a call originated on the CMRS network that it terminates is interstate or intrastate in nature. The same facilities are used and the same costs are incurred.

Finally, as has been discussed at length in the comments, a patchwork of State regulatory schemes for LEC/CMRS interconnection is inconsistent with and could thwart or impede the Commission's valid regulatory objectives - to facilitate competition between wireless and local exchange services and to promote a seamless service "network of networks" nationwide. Preemption is necessary to create the national uniformity necessary to protect these valid federal regulatory objectives.